

AF/2167 & IZW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT: Mattson

GROUP ART UNIT: 2167

SERIAL NO.: 09/560,067

EXAMINER: O'Connor

FILING DATE: April 27, 2000

ATTY. DOCKET NO.: MAT-P-99-002

INVENTION: "A SYSTEM AND METHOD FOR PROVIDING REAL-TIME  
RESTAURANT REVIEWS"

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPELLANT'S APPEAL BRIEF TRANSMITTAL LETTER**

MADAM:

Appellant submits herewith, in triplicate, Appellant's Appeal Brief in support of the Notice of Appeal filed September 28, 2004. Appellant encloses a check for \$170.00 for submission of this Appeal Brief. Appellant authorizes the Patent Office to charge any fees that may be due and owing or to credit any overpayment to Deposit Account No. 50-0595. A duplicate copy of this sheet is enclosed for this purpose.

Additionally, Applicant requests a refund of the \$170.00 fee for filing of this Appeal Brief. More specifically, Applicant respectfully submits that this Appeal Brief is being submitted as a result of the Patent Office re-opening prosecution after Applicant filed an Appeal Brief and previously paid the Appeal Brief fee; therefore, Applicant is entitled to a refund of this fee as well as the fee for filing the previous Appeal Brief.

Applicant authorizes the Patent Office to credit Applicant's deposit account to refund these previously paid fees.

Respectfully submitted,

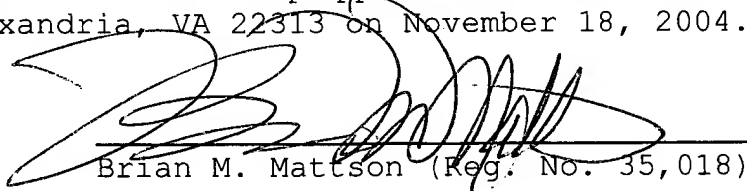


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**CERTIFICATE OF MAILING**

I hereby certify that this **APPEAL BRIEF with APPENDIX CONTAINING CLAIMS 9-14, 21, 22, 24, 25 and 27-29, SUPPLEMENTAL APPENDIX CONTAINING EXHIBITS A, B, C, D, E and F and check for \$170.00** are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, Alexandria, VA 22313 on November 18, 2004.



Brian M. Mattson (Reg. No. 35,018)



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**APPELLANT'S APPEAL BRIEF**

SIR:

This Appeal Brief is submitted in support of the Notice of Appeal filed on September 28, 2004. The Appeal was taken from the Final Rejection dated September 20, 2004.

**I. REAL PARTY IN INTEREST**

Patents+TMS, P.C. is the real party in interest in this Appeal. An Assignment has been filed and recorded in the U.S. Patent Office regarding ownership interest of this application.

**II. RELATED APPEALS AND INTERFERENCES**

No other appeals or interferences are known to Appellant or Appellant's legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

### **III. STATUS OF CLAIMS**

Claims 9-14, 21, 22, 24, 25 and 27-29 are pending in this patent application. Claims 1-8 and 15-20 were withdrawn from consideration. Claims 23 and 26 were cancelled. A copy of the claims is appended hereto as the Appendix. Claims 9-14 and 21, 22, 24, 25 and 27-29 were finally rejected by the Patent Office in a Final Rejection dated September 17, 2004 and are hereby on appeal. The Final Rejection is appended hereto as Exhibit A of the Supplemental Appendix.

### **IV. STATUS OF AMENDMENTS**

All amendments have been entered in this patent application. No amendments to the claims were made after the Final Rejection.

### **V. SUMMARY OF INVENTION**

The present invention generally relates to a method for providing a real-time review of a restaurant. In addition, the present invention provides a method for providing reviews of restaurants and for providing this information to potential patrons 14 outside the restaurant in real-time. (Page 6, lines 30-34 and Page 7, lines 1 and 2)

Referring now to Figures 1 and 2, a method is provided wherein a patron 14 of a restaurant transmits information about a restaurant to a computer network, such as, for example, the

Internet. An apparatus 16 is provided which may contain a processing unit 52 for entering real-time information regarding a restaurant. The real-time information is then transmitted to a destination remote from the restaurant. (Page 7, lines 20-28)

Alternatively, the apparatus 16 may be a portable device that allows a restaurant patron to input a restaurant review thereinto and posts the information in real-time on the computer network. The apparatus 16 may be, for example, a cellular phone or personal digital assistant having access to the Internet or may be any other like device apparent to those skilled in the art. (Page 8, lines 3-9)

Appellant's invention provides a method for providing information from a patron 14 regarding a restaurant. The method provides a wireless device located in the restaurant wherein the wireless device is used by the patron 14 to input information regarding the restaurant and to transmit the information to a destination outside of the restaurant. (Page 8, lines 6-11)

Providing review information in real-time may allow a potential patron the ability to determine specific characteristics of a plurality of restaurants to determine which restaurant the potential patron may wish to patronize. Further, the potential patron may receive a plurality of reviews from a plurality of restaurant patrons that are in the same restaurant

to obtain a survey of the restaurant from a plurality of points of view. (Page 9, lines 1-8)

Figure 2 shows a black box diagram illustrating a processing unit 52, an input means 54, a display means 56 and a transmission means 58. The patron 14 may use the input means 54 to input specific information about the restaurant into the processing unit 52. The patron 14 may use the display means 56 to review what the patron 14 inputs into the processing unit 52. After the patron 14 has input information concerning the particular restaurant 1 into the processing unit 52 via the input means 54, the patron 14 may send the information via the transmission means 58 to a network 60. The network 60 may be any type of information network, such as, for example, the Internet. (Page 9, lines 12-25)

Connected to the network 60 may be a display means 62 such as, for example, a computer display monitor or any other like display means capable of displaying information thereon. A user may use the display means 62 to view the information posted on the network 60 by the patron 14. Viewing the information posted on the network may be accomplished while the patron 14 is dinning at the restaurant. The user may then receive real-time information about the restaurant. The user may then decide whether he wishes to patronize that restaurant or may use the

information for any reason that may be apparent to those skilled in the art. (Page 9, lines 26-33 and Page 10, lines 1-4)

Further, a portable display means 64 may be connected to the network 60 via a portable connecting wire or a radio transmission means via an antenna. For example, the portable display means may be a telephone having a screen thereon whereupon the user may show information posted by the patron 14 in the restaurant. (Page 10, lines 5-10)

## **VI. ISSUES**

1. Would Claims 9-14 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of Appellant's invention over *CyberDiner Internet Café Systems* (hereinafter *CyberDiner*) in view of the *Blue Ginger* webpage at the Boston Globe (hereinafter *Blue Ginger*)? See *CyberDriner* attached as Exhibit B of the Supplemental Appendix and *Blue Ginger* attached as Exhibit C of the Supplemental Appendix.

2. Would Claims 21, 22 and 24 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of Appellant's invention over *CyberDiner* in view of the *Blue Ginger* and further in view of *Koether* (U.S. Patent No. 5,875,430)? See *Koether* attached as Exhibit D of the Supplemental Appendix.

3. Would Claims 25 and 27-29 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of

Appellant's invention in view of *Lincke et al.* (U.S. Patent No. 6,253,326)? See *Lincke et al.* attached as Exhibit E of the Supplemental Appendix.

## **VII. GROUPING OF CLAIMS**

Appellant argues for the patentability of independent Claims 9, 21 and 25 separately and apart from one another. In addition, Appellant argues for the patentability of dependent Claims 10-14, 22, 24 and 27-29.

## **VIII. ARGUMENT**

### **A. THE CITED REFERENCES AND REJECTIONS OF CLAIMS 9-14**

Independent Claim 9 and dependent Claims 10-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *CyberDiner* in view of *Blue Ginger*.

In the Final Rejection, the Patent Office stated:

Claims 9-14 are rejected under 35 U.S.C. §102(b) as being unpatentable over *CyberDiner Internet Café Systems*, in view of the *Blue Ginger* webpage at the Boston Globe website. *CyberDiner Internet Café Systems* comprises a restaurant, the restaurant having personal computers connected to the Internet for providing Internet access to restaurant patrons (thereby enabling the patrons to access Internet websites), the restaurant therefore inherently having within it (at each patron's computer) an apparatus comprising: an input means and a



transmission means, wherein the obvious, self-evident method of use is to input real-time information into the apparatus to be transmitted remotely from the restaurant (to the Internet) by the transmission means in real-time; a receiving means; a display means connected to the apparatus that displays the information; a processing means; an input means (information being displayed simultaneously while it is input into the processing means); and, a network (to which the patron's computer is connected) remotely receiving the information from the apparatus, the network being the Internet; but CyberDiner Internet Café Systems, however, does not specifically disclose that the real-time information to be entered into the apparatus would comprise real-time information concerning the restaurant, such as a review of the restaurant, nor does it disclose posting the entered and transmitted real-time information at a website outside of the restaurant for viewing by persons outside of the restaurant.

(See Final Rejection, Pages 2 and 3 of Exhibit A of the Supplemental Appendix.)

Further, in the Final Rejection, the Patent Office stated:

However, Blue Ginger webpage at the Boston Globe website shows information concerning a restaurant (reviews of a restaurant) that has been entered into the Internet and posted at the website by patrons of the restaurant, where it is stored and accessed by computer, but the information is not specifically disclosed as having necessarily been entered into the Internet and transmitted to the website in real-time, while the restaurant patron was still in

the restaurant.

(See Final Rejection, Page 3 of Exhibit A of the Supplemental Appendix.)

**B. CLAIMS 9-14 WOULD NOT HAVE BEEN OBVIOUS TO ONE OF  
ORDINARY SKILL IN THE ART AT THE TIME OF THE INVENTION  
IN VIEW OF *CYBERDINER* AND FURTHER IN VIEW OF *BLUE GINGER*,  
TAKEN SINGLY OR IN COMBINATION**

With respect to the rejection of Claims 9-14 under 35 U.S.C. §103(a) as being unpatentable over *CyberDiner* in view of *Blue Ginger*, Appellant respectfully submits that the claims distinctly define the present invention from *CyberDiner* and *Blue Ginger*, taken singly or in combination, for the reasons that follow.

As previously set forth, independent Claim 9 defines a method for transmitting real-time information regarding a restaurant by a patron of the restaurant. The method has the requires providing a first apparatus having an input means wherein the input means allows entry of the real-time information by the patron of the restaurant. In addition, Claim 9 requires inputting the real-time information into the input means of the first apparatus wherein the real-time information regarding the restaurant. Further, Claim 9 requires transmitting the real-time information to a destination remote from the restaurant.

*CyberDiner* merely discloses a system wherein Internet access is installed within a business, for example, a restaurant. More specifically, *CyberDiner* is a system designed to enable a patron of a store to explore the Internet without the store providing technical support to the patron. Thus, *CyberDiner* merely acts as an installation, maintenance and technical support company that provides Internet access to patrons of businesses.

*CyberDiner* teaches training to the staff of the business where the Internet access is installed. Further, *CyberDiner* provides on-line help to patrons of the business. Still further, *CyberDiner* provides electronic mail boxes to every *CyberDiner* user. Therefore, *CyberDiner* merely allows an expert or a novice to access the Internet from within a business.

The Examiner admits that *CyberDiner* fails to disclose real-time information being entered into the apparatus concern the restaurant and posting the transmitted real-time information at a website outside of the restaurant for viewing by persons outside of the restaurant.

With respect to *Blue Ginger*, *Blue Ginger* is merely a website of the Boston Globe where a number of reviews are posted relating to the *Blue Ginger* restaurant.

Neither *CyberDiner* nor *Blue Ginger*, taken singly or in

combination, teaches or suggests inputting or transmitting real-time information regarding a restaurant, as required by Claim 9. The Examiner alleges *Blue Ginger* teaches displaying information concerning a restaurant (reviews of the restaurant) that has been entered into the Internet and posted at the website by patrons of the restaurant. However, the Examiner admits "the information is not specifically disclosed as having necessarily been entered into the Internet and transmitted to the website in real-time, while the restaurant patron was still in the restaurant." (See Final Rejection, page 3 attached hereto as Exhibit A.)

The Examiner also admits that *CyberDiner* fails to teach or suggest inputting real-time information regarding a restaurant. *CyberDiner* fails to even remotely teach or suggest the input of real-time information regarding a restaurant by a patron of the restaurant. Claim 9 requires the real-time information to include information regarding the restaurant. *CyberDiner* fails to teach or even remotely suggest inputting real-time information regarding the restaurant. In fact, *CyberDiner* only indicates that a patron both sends and receives e-mail messages. Absolutely no suggestion is provided by *CyberDiner* that the information is real-time information regarding the restaurant as required by Claim 9. Therefore, Claim 9 would not have been

obvious to one of ordinary skill in the art at the time of the invention in view of *CyberDiner* and *Blue Ginger*, taken singly or in combination.

Actually, both *CyberDiner* and *Blue Ginger*, taken singly or in combination, teach away from the present invention as defined by Claim 9. *Blue Ginger* teaches transmitting information regarding a restaurant, which is not in real-time. In fact, the Examiner admits that "the information is not specifically disclosed as having necessarily been entered into the Internet and transmitted to the website in real-time." (See Final Rejection, page 3 attached hereto as Exhibit A.) Moreover, all of the reviews on the *Blue Ginger* website are written in past tense, because each review was written after the user visited the restaurant. For example, one user said, "we went to Blue Ginger several weekends ago." Moreover, Merriam-Webster's Collegiate Dictionary defines real-time as "the actual time during which something takes place." (See Exhibit E.) The Examiner, however, interprets real-time restaurant information to be posting a review of a restaurant "as quickly as possible, while the dining experience was still fresh in the mind of the reviewer." (See Final Rejection, page 4 attached hereto as Exhibit A.) Such an interpretation of Claim 9 is unsupported by the commonly accepted definition of "real-time" and improper.

Therefore, Claim 9 would not have been obvious to one of ordinary skill in the art at the time of the invention in view of *CyberDiner* and *Blue Ginger*, taken singly or in combination.

Not until Appellant's invention was a method to provide real-time restaurant reviews ever contemplated. Appellant recognized the need to provide current and/or real-time information regarding a restaurant when creating reviews for the restaurant. This need was first identified by Appellant, and Appellant's claimed invention defines a method to effect such reviews. Such a method was never contemplated anywhere or taught anywhere prior to Appellant's invention.

Dependent Claim 10 of the present invention requires transmitting the real-time information regarding the restaurant to a display means to be viewed by a patron outside of the restaurant. Neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teaches or suggests transmitting the real-time information regarding the restaurant to a display means to be viewed by a patron outside of the restaurant. Transmitting the real-time information regarding the restaurant to a display means to be viewed by a patron outside of the restaurant is an important distinction and requirement of Appellant's invention because this feature allows a user to view the real-time information regarding the restaurant immediately before deciding

on whether to patronize the restaurant. Moreover, Appellant's invention allows a user to make a determination on whether to patronize a restaurant based on current real-time information and not based on a review that occurred at some unknown past time, as Blue Ginger teaches. For example, a user may view the real-time information of any number of restaurants before deciding at which restaurant to dine. This feature allows a user to make a decision regarding a restaurant based on real-time information regarding the restaurant. *CyberDiner* merely teaches providing Internet access within a restaurant. *Blue Ginger* merely teaches the posting of restaurant reviews after patronizing the restaurant. Therefore, Claim 10 would not have been obvious to one of ordinary skill in the art at the time of the invention in view of *CyberDiner* and *Blue Ginger*, taken singly or in combination.

Dependent Claim 11 requires providing a network on which the real-time information is received and stored and further requires retrieving the information from the network. Neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teaches or suggests providing a network on which the real-time information is received, stored and retrieved from the network, as required by Claim 11. More specifically, neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teaches or

suggests receiving, storing or retrieving real-time information regarding a restaurant. *Blue Ginger* teaches storing and retrieving information which is not in real-time. *CyberDiner* fails to teach or even remotely suggest receiving, storing or retrieving information regarding a restaurant. Providing a network on which the real-time information is received and stored and further retrieving the information from the network are important distinctions of Appellant's invention because a network provides a central "location" wherein users may store and/or retrieve the real-time information regarding the restaurant. Therefore, Claim 11 would not have been obvious to one of ordinary skill in the art at the time of the invention in view of *CyberDiner* and *Blue Ginger*, taken singly or in combination.

Dependent Claim 12 requires providing a computer network and transmitting the real-time information to the computer network. Neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teaches or suggests providing a computer network and transmitting the real-time information to the computer network, as required by Claim 12. *Blue Ginger* merely teaches a website with reviews of restaurants long after the restaurant patrons have patronized the restaurant. Again, *CyberDiner* does not even remotely teach or suggest transmitting real-time



information regarding a restaurant. The Examiner admits that *Blue Ginger* and *CyberDiner* fail to teach or suggest inputting or transmitting real-time information. Providing a computer network and transmitting the real-time information to the computer network are important distinctions of Appellant's invention because the computer network processes the real-time information. The information transmitted to the computer network must be capable of access in real-time because the real-time information regarding the restaurant may continuously change. For example, the particular staff cooking or serving the food on a particular day, the freshness of the food, the specials of the day or the wait required for service may be input by a patron, and that real-time information regarding the restaurant may be transmitted to a computer network. Therefore, Claim 12 would not have been obvious to one of ordinary skill in the art at the time of the invention in view of *CyberDiner* and *Blue Ginger*, taken singly or in combination.

Dependent Claim 13 requires providing a website and posting the real-time information on the website. Neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teaches or suggests providing a website and posting the real-time information on the website, as required by Claim 13. Specifically, neither *CyberDiner* nor *Blue Ginger*, taken singly

or in combination, teaches or suggests posting the real-time information on the website. The Examiner admits that *CyberDiner* and *Blue Ginger* fail to teach inputting or transmitting real-time information regarding a restaurant. Therefore, Claim 13 would not have been obvious to one of ordinary skill in the art at the time of the invention in view of *CyberDiner* and *Blue Ginger*, taken singly or in combination.

Dependent Claim 14 requires accessing the real-time information via a computer. Neither *CyberDiner* nor *Blue Ginger*, taken singly or in combination, teaches or suggests accessing the real-time information via a computer, as required by Claim 14. The Examiner admits that *CyberDiner* and *Blue Ginger* fail to teach inputting or transmitting real-time information regarding a restaurant. Consequently, *CyberDiner* and *Blue Ginger* fail to teach accessing real-time information via a computer. Therefore, Claim 14 would not have been obvious to one of ordinary skill in the art at the time of the invention in view of *CyberDiner* and *Blue Ginger*, taken singly or in combination.

Moreover, a person of ordinary skill in the art would never have been motivated to combine *CyberDiner* with *Blue Ginger* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). Appellant submits that the Patent Office is merely "piece-mealing" references together,

providing various teachings and positively defined limitations of Appellant's method and system for providing bed availability information to deprecate the claimed invention. Of course, hindsight reconstruction of Appellant's invention is impermissible. Appellant respectfully submits that Claims 9-14 distinctly define the present invention from *CyberDiner* and/or *Blue Ginger*, taken singly or in combination.

With the analysis of the deficiencies of *CyberDiner* and *Blue Ginger* in mind, no reason or suggestion in the evidence of record exists why one of ordinary skill in the art would have been led to combine *CyberDiner* and *Blue Ginger* in the manner suggested by the Patent Office in formulating the rejections under 35 U.S.C. §103. Therefore, *prima facie* obviousness has not been established by the Patent Office as required under 35 U.S.C. §103.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

Appellant further submits that one having ordinary skill in the art at the time of Appellant's invention would never have been motivated to modify *CyberDiner* with *Blue Ginger* in the manner suggested by the Examiner in formulating the rejections

under 35 U.S.C. §103(a).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most, if not all, elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of all the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1545, 220 USPQ 193 (Fed. Cir. 1983).

Appellant submits that the Examiner has merely located components of Appellant's claimed invention. However, that the art disclosed components of Appellant's claimed invention, either separately or used in other combinations, is insufficient. A teaching, suggestion, or incentive must exist to make the combination made by Appellant. *Interconnect Planning Corp. v. Feil*, 774 F. 2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

Even assuming that one having ordinary skill in the art could somehow have combined *CyberDiner* and *Blue Ginger* as set forth by the Examiner, the resultant combination still lacks the critical steps and elements positively recited in Claims 9-14, respectively. Specifically, neither *CyberDiner* nor *Blue Ginger*,

taken singly or in combination, teaches or even remotely suggests inputting, transmitting, displaying or accessing real-time information. Moreover, *CyberDiner* fails to teach or even remotely suggest inputting, transmitting, displaying or accessing information regarding a restaurant, which is not in real-time.

In view of the foregoing, Appellant respectfully submits that the rejection of Claims 9-14 under 35 U.S.C. §103(a) is improper.

**C. THE CITED REFERENCES AND  
REJECTION OF CLAIMS 21, 22 AND 24**

Dependent Claims 21, 22 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *CyberDiner* in view of *Blue Ginger* and further in view of *Koether* (U.S. Patent No. 5,875,430).

In the Final Rejection, the Patent Office stated:

*CyberDiner Internet Café Systems* comprises a restaurant, the restaurant having personal computers (personal digital assistants connected to a local area network (LAN), the local area network being connected to a wide area network (WAN), the wide area network being the Internet, for providing Internet access to restaurant patrons (thereby enabling the patrons to access the Internet websites), as applied above in the rejection of Claims 9-14, but the particular connection method(s) of the personal digital assistants of *CyberDiner Internet Café Systems* to the *CyberDiner*

local area network, whether wired or wireless, is not specifically disclosed.

However, *Koether* discloses a restaurant connecting various computer devices therein by means of a local area network, the restaurant's local area network being connected to a wide area network, the wide area network being the Internet, the devices thereby being able to access the Internet, and *Koether* indeed discloses that the connections of the local area network may be either wired or wireless, but, are preferably wireless (see, in particular, Figure 1 and the description thereof in column 5, lines 3-19).

(See Final Rejection, Page 4 of Exhibit A of the Supplemental Appendix.)

**D. CLAIMS 21, 22 AND 24 WOULD NOT HAVE BEEN OBVIOUS TO ONE OF ORDINARY SKILL IN THE ART AT THE TIME OF THE INVENTION OVER *CYBERDINER* AND IN VIEW OF *BLUE GINGER* AND FURTHER IN VIEW OF *KOETHER*, TAKEN SINGLY OR IN COMBINATION**

Independent Claim 21 defines a method for providing information from a patron regarding a restaurant. Claim 21 requires providing a wireless device located in the restaurant wherein the wireless device is used by the patron. Claim 21 further requires providing for the input of information into the wireless device and transmitting the information from the wireless device to a destination outside of the restaurant.

*CyberDiner*, *Blue Ginger* and *Koether*, taken singly or in combination, do not teach or suggest providing a wireless device located in the restaurant wherein the wireless device is used by the patron, as required by Claim 21. In addition, *CyberDiner*,

*Blue Ginger* and *Koether*, taken singly or in combination, do not teach or suggest inputting information into the wireless device regarding information about the restaurant, as required by Claim 21. *Blue Ginger* merely teaches a website where users after leaving a restaurant post a review of a restaurant. Actually, *Blue Ginger* teaches away from the present invention as defined by Claim 21. The restaurant reviews of *Blue Ginger* are written outside of the restaurant and after the patron has left the restaurant. For example, one user said, "we went to *Blue Ginger* several weekends ago." Likewise, *CyberDiner* teaches away from the present invention as defined by Claim 21. *CyberDiner* requires "a place to put it and a place to plug it in" (emphasis added). Furthermore, nowhere does *CyberDiner* teach or suggest inputting information regarding a restaurant.

Moreover, *Koether* does not teach or suggest inputting information regarding the restaurant. *Koether* teaches a system and a method for monitoring and controlling "kitchen or restaurant appliances located over a wide geographical area." See *Koether*, col. 3, lines 52-54. The communication in *Koether* does not relate to information regarding the restaurant. Specifically, the information provided to the apparatus in *Koether* is, for example, "cooking parameters, billing

information, appliance identification, diagnostic information, and maintenance instructions". See *Koether*, col.5, lines 25-28. Thus, the information in *Koether* relates merely to kitchen appliances. Therefore, *CyberDiner*, *Blue Ginger* and *Koether*, taken individually or in combination, do not teach or suggest providing a wireless device located in a restaurant or inputting information into the wireless device regarding information about the restaurant, as required by Claim 21. Accordingly, Claim 21 would not have been obvious at the time of the invention over *CyberDiner* in view of *Blue Ginger* and further in view of *Koether*.

Dependent Claim 22 requires receiving the information regarding the restaurant transmitted by the wireless device on a computer network. *CyberDiner*, *Blue Ginger* and *Koether*, taken singly or in combination, do not teach or suggest receiving the information regarding the restaurant transmitted by the wireless device on a computer network, as required by Claim 22. Specifically *CyberDiner*, *Blue Ginger* and *Koether*, taken singly or in combination, do not teach or even remotely suggest receiving information transmitted by a wireless device. Therefore, *CyberDiner*, *Blue Ginger* and *Koether*, taken individually or in combination, do not teach or suggest receiving the information regarding the restaurant transmitted



by the wireless device on a computer network, as required by Claim 22. Accordingly, Claim 22 would not have been obvious at the time of the invention over *CyberDiner* in view of *Blue Ginger* and further in view of *Koether*.

Dependent Claim 24 requires providing a personal digital assistant located in a restaurant wherein the personal digital assistant is used by the patron. In addition, Claim 24 requires inputting information into the personal digital assistant regarding information about the restaurant. Furthermore, Claim 24 requires transmitting information regarding the restaurant from the personal digital assistant to a destination outside of the restaurant.

On the contrary, *CyberDiner*, *Blue Ginger* and *Koether*, taken singly or in combination, do not teach or suggest providing a personal digital assistant in a restaurant, inputting information into the personal digital assistant or transmitting information regarding the restaurant from the personal digital assistant, as required by Claim 24. Actually, *CyberDiner*, *Blue Ginger* and *Koether*, taken singly or in combination, fail to teach or even remotely suggest use of a personal digital assistant. Therefore, *CyberDiner*, *Blue Ginger* and *Koether*, taken individually or in combination, do not teach or suggest providing a personal digital assistant in a restaurant,

inputting information into the personal digital assistant or transmitting information regarding the restaurant from the personal digital assistant, as required by Claim 24. Accordingly, Claim 24 would not have been obvious at the time of the invention over *CyberDiner* in view of *Blue Ginger* and further in view of *Koether*.

With the analysis of the deficiencies of *CyberDiner*, *Blue Ginger* and *Koether* in mind, no reason or suggestion in the evidence of record exists why one of ordinary skill in the art would have been led to combine *CyberDiner*, *Blue Ginger* and *Koether* in the manner suggested by the Patent Office in formulating the rejections under 35 U.S.C. §103. Therefore, *prima facie* obviousness has not been established by the Patent Office as required under 35 U.S.C. §103.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

Appellant further submits that one having ordinary skill in the art at the time of Appellant's invention would never have been motivated to modify *CyberDiner* with *Blue Ginger* and *Koether* in the manner suggested by the Examiner in formulating the rejections under 35 U.S.C. §103(a).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most, if not all, elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of all the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1545, 220 USPQ 193 (Fed. Cir. 1983).

Appellant submits that the Examiner has merely located components of Appellant's claimed invention. However, that the art disclosed components of Appellant's claimed invention, either separately or used in other combinations, is insufficient. A teaching, suggestion, or incentive must exist to make the combination made by Appellant. *Interconnect Planning Corp. v. Feil*, 774 F. 2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

Even assuming that one having ordinary skill in the art could somehow have combined *CyberDiner*, *Blue Ginger* and *Koether* as set forth by the Examiner, the resultant combination still lacks the critical steps and elements positively recited in Claims 21, 22 and 24, respectively. Specifically, *CyberDiner*, *Blue Ginger* and *Koether*, taken singly or in combination, fail to

teach or even remotely suggest providing a wireless device, inputting information into the wireless device or transmitting information regarding the restaurant from the wireless device.

In view of the foregoing, Appellant submits that the rejection of Claims 21, 22 and 24 under 35 U.S.C. §103(a) is improper.

**E. THE CITED REFERENCE AND  
REJECTIONS OF CLAIMS 25 AND 27-29**

Claims 25 and 27-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lincke et al. (U.S. Patent No. 6,253,326).

In the Final Rejection, the Patent Office stated:

Lincke et al. disclose a system and method for providing real-time information regarding a restaurant, comprising: providing a portable apparatus 100 operated by a user, wherein the portable apparatus 100 has an input means, a wireless transmission means, and a display 101; providing a form 105 on the display 101 of the portable apparatus 100, wherein the form 105 includes information that the user implements to enter as the real-time information regarding the restaurant, wherein the real-time information includes features of the restaurant, including at least one of the food served at the restaurant, service at the restaurant, and ambiance of the restaurant (see, for example, Figure 3); inputting the real-time information regarding the restaurant into the portable apparatus by the user; processing the real-time information input by the user; and, transmitting the real-time information 305 input by the user to a destination 140 remote from the restaurant, but while Lincke et al. do disclose using the

portable apparatus to enter the real-time information regarding the restaurant, they do not disclose doing so while at the restaurant.

(See Final Rejection, Page 5 of Exhibit A of the Supplemental Appendix.)

**F. CLAIMS 25 AND 27-29 WOULD NOT HAVE BEEN OBVIOUS  
TO ONE OF ORDINARY SKILL IN THE ART AT THE TIME  
OF THE INVENTION IN VIEW OF LINCKE ET AL.**

Independent Claim 25 defines a method for providing real-time information regarding a restaurant. Claim 25 requires providing a portable apparatus operated by a user wherein the portable apparatus has an input means, a wireless transmission means and a display. In addition, Claim 25 requires providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant. Further, Claim 25 requires providing real-time information including at least one of the food served at the restaurant, service at the restaurant and ambiance of the restaurant. Claim 25 also requires inputting the real-time information at the restaurant regarding the restaurant into the portable apparatus by the user. Furthermore, Claim 25 requires processing and transmitting the real-time information input by the user to a destination remote from the restaurant.

*Lincke et al.* merely teach wireless messaging and using a

proxy server to facilitate communication between web servers, mail servers, and other Internet data sources. Specifically, Figure 3 of *Lincke et al.* merely teaches using a wireless device to execute a browser. The browser of *Lincke et al.* allows a user to send a query to a web server and receives a response from the web server. More specifically, Figure 3 of *Lincke et al.* merely teaches a method for finding the name and the phone number of a restaurant based on a number of search criteria. *Lincke et. al.* allow a user to find a restaurant based on, for example, price, location and type of food. The user may input location, type of food and/or price to retrieve a list of suitable restaurants. In essence, Figure 3 merely teaches using a wireless device to access the Internet.

However, nowhere do *Lincke et. al.* teach or suggest inputting the real-time information at the restaurant into the portable apparatus by the user, as required by Claim 25. *Lincke et al.* merely teach enabling a user to execute a browser on a wireless device to communicate with a web server. However, nowhere do *Lincke et al.* teach or even remotely suggest using the wireless device to input, process or transmit real-time information reading the restaurant at the restaurant, as required by Claim 25. *Lincke et al.* actually teach away from

inputting the real-time information at the restaurant, as required by Claim 25. Figure 3 of *Lincke et al.* merely teaches using a wireless device to search for a restaurant unknown to the user. Consequently, the user is not inputting real-time information at the restaurant, as required by Claim 25.

Not until Appellant's invention was a method to provide real-time restaurant reviews ever contemplated. Appellant recognized the need to provide current and/or real-time information regarding a restaurant when creating reviews for the restaurant. This need was first identified by Appellant, and Appellant's claimed invention defines a method to effect such reviews. Such a method was never contemplated anywhere or taught anywhere prior to Appellant's invention. Providing real-time restaurant reviews is distinct from the wireless browser of *Lincke et al.*, which merely allows a user to access a web server to search for restaurants unknown to the user. Therefore, Claim 25 would not have been obvious at the time of the invention in view of *Lincke et al.*

Moreover, nowhere do *Lincke et al.* teach or suggest providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant, as required by Claim 25. Again, *Lincke et*

*al.* teach away from the present invention as defined by Claim 25. *Lincke et al.* teach searching for a type of restaurant within a given city. However, Claim 25 requires a form that includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant. Therefore, Claim 25 would not have been obvious at the time of the invention in view of *Lincke et al.*

Claim 27 requires providing a form on the display of a personal digital assistant wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant. Nowhere do *Lincke et al.* teach or suggest providing a form on the display of a personal digital assistant wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant, as required by Claim 27. Again, *Lincke et al.* teach away from the present invention as defined by Claim 27 because *Lincke et al.* merely teach searching for a type of restaurant within a given city. However, Claim 27 requires a form that includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant. Therefore, Claim 27 would not have been obvious at the time of the invention in view of *Lincke et al.*



Claim 28 requires transmitting the real-time information regarding the restaurant input by the user to a website remote from the restaurant. Nowhere do *Lincke et. al.* teach or suggest transmitting the real-time information regarding the restaurant input by the user to a website remote from the restaurant, as required by Claim 28. Again, *Lincke et al.* teach away from the present invention as defined by Claim 28. *Lincke et al.* actually teach away from transmitting the real-time information at the restaurant, as required by Claim 28. Figure 3 of *Lincke et al.* teaches using a wireless device to search for a restaurant unknown to the user. Consequently, the user is not transmitting real-time information regarding the restaurant by the user to a website remote from the restaurant, as required by Claim 28. Therefore, Claim 28 would not have been obvious at the time of the invention in view of *Lincke et al.*

Claim 29 requires transmitting the real-time information regarding the restaurant input by the user to a destination remote from the restaurant wherein the destination is accessible using a portable wireless device. Nowhere do *Lincke et al.* teach or suggest *Lincke et al.* transmitting the real-time information regarding the restaurant input by the user to a destination remote from the restaurant wherein the destination is accessible using a portable wireless device, as required by

Claim 29. Specifically, nowhere do *Lincke et al.* teach or suggest a destination accessible using a portable wireless device which contains real-time information regarding a restaurant. *Lincke et al.* merely teach using a wireless device to search for a restaurant unknown to the user. As a result, *Lincke et al.* merely teach accessing information, regarding a restaurant, such as telephone number, address and price range of the restaurant. The information accessible in *Lincke et al.* is not real-time information. Therefore, Claim 29 would not have been obvious at the time of the invention in view of *Lincke et al.*

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972). Appellant further submits that one having ordinary skill in the art at the time of Appellant's invention would never have been motivated to modify *Lincke et al.* in the manner suggested by the Examiner in formulating the rejections under 35 U.S.C. §103(a).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most, if not all, elements perform their ordained and expected functions. The test is

whether the invention as a whole, in light of all the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1545, 220 USPQ 193 (Fed. Cir. 1983).

Appellant submits that the Examiner has merely located components of Appellant's claimed invention. However, that the art disclosed components of Appellant's claimed invention, either separately or used in other combinations, is insufficient. A teaching, suggestion, or incentive must exist to make the combination made by Appellant. *Interconnect Planning Corp. v. Feil*, 774 F. 2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

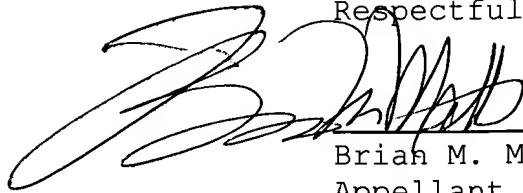
In view of the foregoing, Appellant submits that the rejection of Claims 25 and 27-29 under 35 U.S.C. §103(a) is improper.

#### **IX. CONCLUSION**

For the foregoing reasons, Appellant respectfully submits that the rejection of Claims 9-14, 21, 22, 24, 25 and 27-29 is

erroneous as a matter of law and fact and respectfully requests  
the Board to reverse the rejection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian M. Mattson', written over a horizontal line.

(Reg. No. 35,018)

Brian M. Mattson  
Appellant and Attorney for Appellant  
Patents+TMS  
A Professional Corporation  
1914 North Milwaukee Avenue  
Chicago, IL 60647

**X. TABLE OF CONTENTS**

1) APPENDIX: Claims 9-14, 21, 22, 24, 25 and 27-29

2) SUPPLEMENTAL APPENDIX

EXHIBIT A: Final Rejection dated September 20, 2004

EXHIBIT B: *CyberDiner Internet Café Systems*  
publication

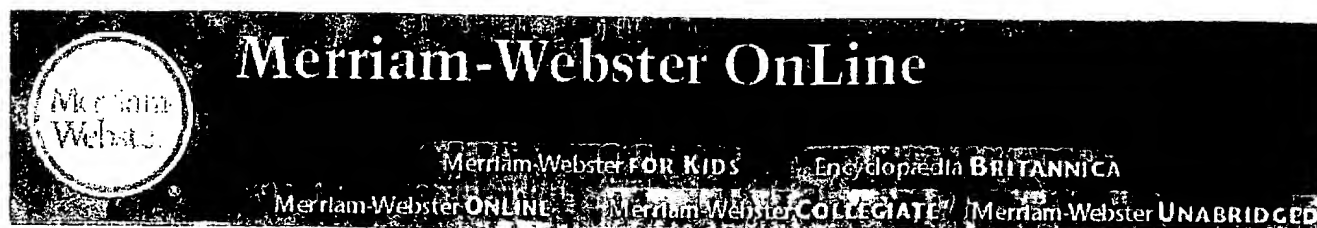
EXHIBIT C: *Blue Ginger* publication

EXHIBIT D: *Koether* (U.S. Patent No. 5,875,430)

EXHIBIT E: *Lincke et al.* (U.S. Patent No. 6,253,326)

EXHIBIT F: Merriam-Webster's Collegiate Dictionary  
definition of "real-time"

## EXHIBIT F

HOME  
PREMIUM SERVICES

M-WCollegiate.com  
M-WUnabridged.com  
Britannica.com  
Multi-User Licenses

 DOWNLOADS  
 WORD OF THE DAY  
 WORD GAMES  
 WORD FOR THE WISE  
 ONLINE STORE  
 HELP

## Merriam-Webster Online Dictionary

One entry found for **real time**.Main Entry: **real time**Function: *noun*

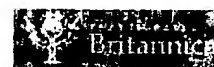
: the actual time during which something takes place <the computer may partly analyze the data in *real time* (as it comes in) -- R. H. March>

- **real-time** *adjective*For More Information on "real+time" go to Britannica.comGet the Top 10 Search Results for "real+time"Pronunciation Symbols

Merriam-Webster Online

Dictionary

Thesaurus



real+time

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## APPENDIX

Claim 9 (previously amended): A method for transmitting real-time information regarding a restaurant by a patron of the restaurant, the method comprising the steps of:

providing a first apparatus having an input means wherein the input means allows entry of the real-time information by the patron of the restaurant;

inputting the real-time information into the input means of the first apparatus wherein the real-time information includes information regarding the restaurant; and

transmitting the real-time information to a destination remote from the restaurant.

Claim 10 (previously amended): The method of Claim 9 further comprising the step of:

transmitting the real-time information regarding the restaurant to a display means to be viewed by a person outside of the restaurant.

Claim 11 (previously amended): The method of Claim 9 further comprising the steps of:

providing a network on which the real-time information is received and stored; and

retrieving the information from the network.

Claim 12 (previously amended): The method of Claim 9 further comprising the steps of:

providing a computer network; and

transmitting the real-time information to the computer network.

Claim 13 (previously amended): The method of Claim 9 further comprising the steps of:

providing a website; and

posting the real-time information to the website.

Claim 14 (previously amended): The method of Claim 9 further comprising the step of:

accessing the real-time information via a computer.

Claim 21 (previously amended): A method for providing information from a patron regarding a restaurant, the system comprising:

providing a wireless device located in the restaurant wherein the wireless device is used by the patron;

inputting information into the wireless device regarding information about the restaurant; and

transmitting the information regarding the restaurant from the wireless device to a destination outside of the restaurant.

Claim 22 (previously amended): The system of Claim 21 further comprising:

receiving the information regarding the restaurant transmitted by the wireless device on a computer network.

Claim 24 (previously amended): The system of Claim 21 wherein



the wireless device is a personal digital assistant.

Claim 25 (previously amended): A method for providing real-time information regarding a restaurant, the method comprising the steps of:

providing a portable apparatus operated by a user wherein the portable apparatus has an input means, a wireless transmission means and a display;

providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant at the restaurant wherein the real-time information includes features of the restaurant including at least one of the food served at the restaurant, service at the restaurant and ambiance of the restaurant;

inputting the real-time information at the restaurant regarding the restaurant into the portable apparatus by the user;

processing the real-time information input by the user; and

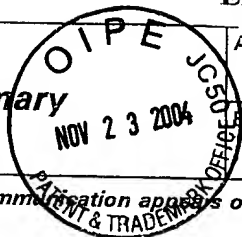
transmitting the real-time information input by the user to a destination remote from the restaurant.

Claim 27 (previously added): The method of Claim 25 wherein the portable wireless apparatus is a personal digital assistant.

Claim 28 (previously added): The method of Claim 25 wherein the destination is a website.

Claim 29 (previously added): The method of Claim 25 wherein the destination is accessible using a portable wireless device.

## Office Action Summary

Application No.  
09/560,067

Applicant(s)

Mattson

Examiner

O'Connor

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on March 1, 2004 (Amdt "D")
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-14, 21, 22, 24, 25, and 27-29 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-14, 21, 22, 24, 25, and 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on April 27, 2000 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):  
a) ☐ All b) ☐ Some\* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Preliminary Remarks*

1. This Office action responds to the amendment and arguments filed by applicant on March 1, 2004 (Paper N<sup>o</sup> 21) in reply to the previous Office action, mailed January 22, 2004.
2. The amendment of claim 25 by applicant in Paper N<sup>o</sup> 21 is hereby acknowledged.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over CyberDiner Internet Cafe Systems, in view of the Blue Ginger webpage at the Boston Globe website.

CyberDiner Internet Cafe Systems comprises a restaurant, the restaurant having personal computers connected to the Internet for providing Internet access to restaurant patrons (thereby enabling the patrons to access Internet websites), the restaurant therefore inherently having within it (at each patron's computer) an apparatus comprising: an input means and a transmission means, wherein the obvious, self-evident method of use is to input real-time information into the

apparatus to be transmitted remotely from the restaurant (to the Internet) by the transmission means in real-time; a receiving means; a display means connected to the apparatus that displays the information; a processing means; an input means (information being displayed simultaneously while it is input into the processing means); and, a network (to which the patron's computer is connected) remotely receiving the information from the apparatus, the network being the Internet; but CyberDiner Internet Cafe Systems, however, does not specifically disclose that the real-time information to be entered into the apparatus would comprise real-time information concerning the restaurant, such as a review of the restaurant, nor does it disclose posting the entered and transmitted real-time information at a website outside of the restaurant for viewing by persons outside of the restaurant.

However, the Blue Ginger webpage at the Boston Globe website shows information concerning a restaurant (reviews of the restaurant) that has been entered into the Internet and posted at the website by patrons of the restaurant, where it is stored and accessed by computer, but the information is not specifically disclosed as having necessarily been entered into the Internet and transmitted to the website in real-time, while the restaurant patron was still in the restaurant.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have used the system and method of CyberDiner simultaneously with the system and method of the Blue Ginger webpage at the Boston Globe (i.e., to view and post to a restaurant review page for the CyberDiner restaurant at the same site as, and comparable to, the Blue Ginger page, <ae.boston.com/dining/restaurant/>, while using the Internet access at CyberDiner to do so),

so as to post a review of the CyberDiner restaurant on the Internet using the Internet access of the CyberDiner establishment, in order to post the review of the restaurant as quickly as possible, while the dining experience was still fresh in the mind of the reviewer.

5. Claims 21, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over CyberDiner Internet Cafe Systems, in view of the Blue Ginger webpage at the Boston Globe website, as applied to claims 9-14 above, and further in view of Koether (US 5,875,430).

CyberDiner Internet Cafe Systems comprises a restaurant, the restaurant having personal computers (personal digital assistants) connected to a local area network (LAN), the local area network being connected to a wide area network (WAN), the wide area network being the Internet, for providing Internet access to restaurant patrons (thereby enabling the patrons to access Internet websites), as applied above in the rejection of claims 9-14, but the particular connection method(s) of the personal digital assistants of CyberDiner Internet Cafe Systems to the CyberDiner local area network, whether wired or wireless, is not specifically disclosed.

However, Koether discloses a restaurant connecting various computer devices therein by means of a local area network, the restaurant's local area network being connected to a wide area network, the wide area network being the Internet, the devices thereby being able to access the Internet, and Koether indeed discloses that the connections of the local area network may be either wired or wireless, but, are preferably wireless (see, in particular, Figure 1 and the description thereof in column 5, lines 3-19).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the system and method of CyberDiner, so as to use wireless connections (if not already) for the local area network connecting the personal digital assistants, in accordance with the teachings of Koether, in order to make installation of the network easier.

6. Claims 25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincke et al. (US 6,253,326). See, in particular, Figures 1 and 3.

Lincke et al. disclose a system and method for providing real-time information regarding a restaurant, comprising: providing a portable apparatus 100 operated by a user, wherein the portable apparatus 100 has an input means, a wireless transmission means, and a display 101; providing a form 105 on the display 101 of the portable apparatus 100, wherein the form 105 includes information that the user implements to enter as the real-time information regarding the restaurant, wherein the real-time information includes features of the restaurant, including at least one of the food served at the restaurant, service at the restaurant, and ambiance of the restaurant (see, for example, Figure 3); inputting the real-time information regarding the restaurant into the portable apparatus by the user; processing the real-time information input by the user; and, transmitting the real-time information 305 input by the user to a destination 140 remote from the restaurant, but while Lincke et al. do disclose using the portable apparatus to enter the real-time information regarding the restaurant, they do not disclose doing so while at the restaurant.

However, to those of ordinary skill in the art, accessing the Internet while at a restaurant using a personal digital assistant or other portable computer is certainly a well known, hence obvious, step to follow, since many restaurants are even specially modified to facilitate such access for such devices (e.g., so-called “hot-spots,” etc.).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Lincke et al. so as to use the portable apparatus to perform the recited steps while at the restaurant, as is well known to do, in order to be able to obtain current information, pertinent to the user’s current activities, in a timely fashion (i.e., to learn more about what the user was interested in and doing at the moment: patronizing the restaurant), and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claim 27, the portable wireless apparatus 100 of Lincke et al. is a personal digital assistant.

Regarding claims 28-29, the destination 140 of Lincke et al. is a website that is accessible using a portable wireless device.

### ***Response to Arguments***

7. Applicant’s arguments filed March 1, 2004 have been fully considered but they are not persuasive.



8. Applicant's arguments with respect to claims 25 and 27-29 have been considered but are moot in view of the new ground(s) of rejection.

9. Regarding the argument that CyberDiner and the blue Ginger webpage at boston.com fail to teach transmitting real-time information regarding a restaurant, the two references when combined, indeed render obvious the transmitting of real-time information regarding a restaurant, because the CyberDiner establishment that provides a patron with access to the Internet to be able to post and review websites such as the Blue Ginger page, is actually a restaurant itself. A patron would be sitting at a table with a computer, using the computer to access restaurant review pages on the Internet (including one for CyberDiner), and being served food and beverage by a waiter, such that the patron could post their review while experiencing the restaurant (i.e., in real-time).

10. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching, suggestion, or motivation to do so found is found in the knowledge generally available to one of ordinary skill in the art. For example, posting on the Internet a Blue Ginger type review of the CyberDiner restaurant, using the Internet access of the CyberDiner establishment to do so, the motivation to do so being a desire to post the review of the restaurant as quickly as possible, while the dining experience was still fresh in the mind of the reviewer.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to the disclosure.

13. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(703) 305-1525**, and whose facsimile number is **(703) 746-3976**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

Inquiries of a general nature or simply relating to the status of the application should be directed to the receptionist, whose telephone number is **(703) 308-1113**.

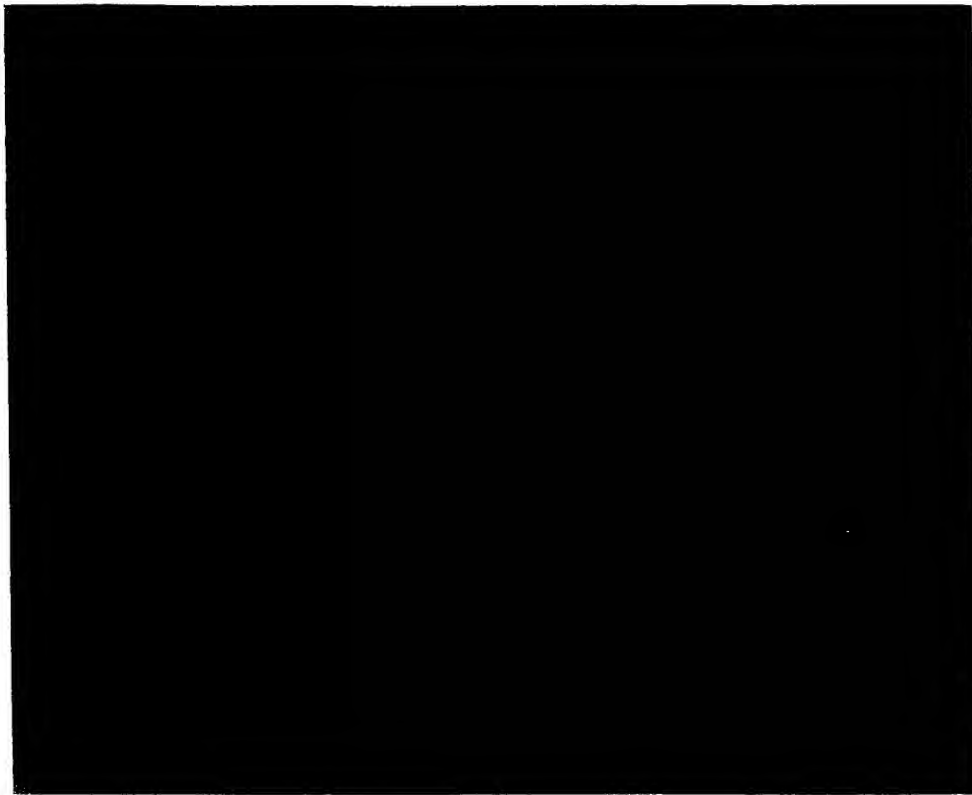
If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at **(703) 308-5183**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306** (fax-back auto-reply receipt service provided). Mailed replies should be addressed to "Commissioner of Patents and Trademarks, Washington, DC 20231." Hand delivered replies should be left with the receptionist on the seventh floor of Crystal Park Five, 2451 Crystal Dr, Arlington, VA 22202.

GJOC

September 17, 2004

## EXHIBIT B



## CyberDiner® Internet Cafe System

## What Our Users Will Receive

Welcome to the CyberDiner Company. We are pleased to provide you with the CyberDiner System.

CyberDiner System will provide you with the CyberDiner System, which will be installed on your computer, and will provide you with the CyberDiner System, which will be installed on your computer, and will provide you with the CyberDiner System, which will be installed on your computer.

For more information, please contact your local CyberDiner Company, or visit our website at [www.cyberdiner.com](http://www.cyberdiner.com). We are pleased to provide you with the CyberDiner System, which will be installed on your computer, and will provide you with the CyberDiner System, which will be installed on your computer.

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CyberDiner provides the general public with FREE access to the net.

Get a more complete description of the features the CyberDiner provides both to the end user and to the establishment.

Check out [Boaters @ Bay](#) in Rolling Hills Estates, CA.

Find out more about us at CyberDiner Co.

Feel free to email with questions, comments, jokes, whatever.

The CyberDiner page of interesting links



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## Features for the End User

- ## Features for the Hosting Establishment

- Ease of installation and startup
- Simple operation
- Minimum time required by personnel
- Ease of maintenance
- Support
- Reporting
- Scalability
- Repeat Business
- Your Own Web Page



[Back to the CyberDiner Internet Cafe Systems home page](#)

## User friendly

The whole idea of the CyberDiner system is a system that can be used successfully by just about anyone. It uses a point and click interface that does not require a computer expert to operate. Step-by-step guides are available to guide the new user through the process of getting on line quickly and easily. We believe that the net should be useful and fun. Not technical and difficult. We have done everything possible to bring this about.

[Back to features list](#)

## Full Internet Access

The CyberDiner system provides all users with full Internet access. World Wide Web, file transfer, email and the rest of the services available on the net. The user interface makes it easy to get started while allowing the experienced user access to the full range of Internet services.

[Back to features list](#)

## Your Own Personal Account

Each CyberDiner customer gets their own account on the system with their own ID and password. This means that you not only have your own email address but also that you can accumulate your own list of favorite places on the net.

[Back to features list](#)

## Send and receive email

Since each CyberDiner user gets their own personal account on the system, it is possible to send and receive electronic mail all over the world. You get your own email address. That means you use it send email to you.

With the net growing all the time this is like the FAX as the local copy shop was back at the past. You

can take advantage of the technology without having to buy it.

[Back to features list](#)

## Take it home with you

The CyberDiner system includes a printer where those things found on the net can be printed. In addition it is possible to download files from the network and take them home on a disk. This includes games, useful programs, pictures and a myriad of information. Thus all the information on the net is available for you to really use.

[Back to features list](#)

## Ease of installation and startup

The CyberDiner system is designed to be installed almost anywhere. A central idea is a system which does not need technically trained individuals. CyberDiner Co. takes care of the technical details of establishing the Internet connection. The systems arrive with all software already installed and ready to run. This includes everything from the Netscape browser and other Internet utilities through user management and reporting software.

CyberDiner Co. also works with you to get the physical installation done. Local computer personnel are used to do the physical installation of the system. All we need is a place to rent and a place to plug in.

[Back to features list](#)

## Simple operation

The CyberDiner system allows you to concentrate on being good at your business while making the advantages of high-tech available to you. All of the technical details of running a computer system are handled by CyberDiner Co.

Simple training materials are supplied with every CyberDiner to allow your personnel to get going quickly in putting new customers on the system.

[Back to features list](#)

## Minimum time required by personnel



Many Internet Cafes have found themselves too busy helping people with the net to have time for running the restaurant. The CyberDiner comes with simple step-by-step instructions for customers to allow them to get going on the net quickly. Everything from logging into the system to how to find what you are looking for on the net are covered.

With the CyberDiner system everything possible is done to streamline the flow. This provides a more enjoyable experience for the customer and prevents the staff from becoming bogged down in the net.

[Back to features list](#)

## Ease of maintenance

Hardware maintenance is contracted to a local computer repair agency. This arrangement is made by the CyberDiner Company. All software maintenance is done by CyberDiner Company via the Internet.

The only thing left for the staff at the site to do is check customers in and take the money.

[Back to features list](#)

## Support

Full technical support is provided by the CyberDiner Company to answer questions and handle any problems which arise. CyberDiner company also manages the hardware maintenance to ensure you are provided with excellent service.

CyberDiner technical support is more than just a phone number to call when you have trouble. We take a proactive approach, monitoring your system to fix potential problems before they become real problems.

[Back to features list](#)

## Reporting

The CyberDiner software package provides full reporting of both system usage and signon activity. Detail reports are available or summaries by customer or time period. All the information you need about your CyberDiner is at your fingertips.

A side benefit of the CyberDiner system is that when a new customer is added to the system their name, address and phone number are included in the account record. This provides a mailing list of your customers.

[Back to features list](#)

## Scalability

The CyberDiner system can grow with your business. Workstations can be added to meet an increasing demand. Where the available phone service permits CyberDiner installs a frame relay connection to the Internet provider. A frame relay line can be upgraded in speed with a minimum effort and expense.

[Back to features list](#)

## Repeat Business

An important part of any business is to keep the customers coming back. Part of this is customer satisfaction. The step-by-step instructions and easy user interface make it possible for individuals to quickly come up to speed and find what they are looking for. Every effort is made to ensure customers are successful in their initial sojourn into the net.

Another part of keeping customers coming back is the value provided to them. The CyberDiner system is not only fun but full attention has been paid to making it useful as well.

Customers get their own accounts on the system so they can both send and receive email. This provides a valuable service which is not available to many people elsewhere.

The system includes a printer and the ability to copy downloaded files to floppy disk. This gives the customer the ability to keep what they find on the net and further increases the value of the system to the customer.

[Back to features list](#)

## Your Own Web Page

Every CyberDiner hosting establishment is provided with a home page on the World Wide Web free of charge. This puts you fully out into Cyberspace making your establishment visible to the world. Not only does this grow your business but also helps promote contacts with others around the world.

[Back to features list](#)



See [http://www.CyberDiner.com](#) for more information.

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## EXHIBIT C

# Food

Food

GO

Chicago  
Sun-Times

Cookbook of the Week

► Cookbook of the Week ► Recipes

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Cookbook of the Week

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Theater

## Blue Ginger

February 23, 2000

Ming Tsai may have gained fame for his Food Network cooking show, but his artful balancing act is what should draw praise. The chef/proprietor of Blue Ginger restaurant in Wellesley, Mass., is a master of combining the culinary traditions of China, Southeast Asia, Japan, France and the United States. What it all adds up to is a surprising yet tasty mingling of flavors. Though the recipes from his new cookbook, **Blue Ginger: Eat Meets West Cooking with Ming Tsai**, can be challenging, Tsai strikes a balance here, too. The more complex recipes have ample instructions--often accompanied by photos--and a helpful pantry section guides cooks who may be unfamiliar with the basic elements and ingredient of Asian cooking.

### Gingered beef with leeks and asparagus

This fragrant, classic stir-fry can be paired with a simple rice side. Try presenting the meal in three mounds on a plate: the beef, the rice and the leeks. A spicy Syrah wine is recommended.

#### Makes about 4 servings

6 1/8-inch-thick slices of fresh ginger  
1 tablespoon toasted sesame oil  
1 teaspoon freshly ground black pepper  
1/4 cup canola oil  
1/4 cup soy sauce  
1/2 cup Shaoxing wine or dry sherry  
1 pound flank steak, cut against the grain into 1/8-inch slices  
1 pound asparagus, ends trimmed and cut into 2-inch pieces

Leeks:



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#### The Blue Ginger

**Food:** 6 **Wine:** 3 **Service:** 8 **Price:** <\$30  
pax

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97 Tanjong Pagar  
Road,  
Singapore 088518  
Tel: 222 3928

#### Setting:

The restored shophouse has ground floor and upper floor dining areas. There are old fashioned hanging lights, carved wooden panels and paintings by a local artist. There is also another branch at The Heeren (tel: 835 3928).

#### Food:

True blue Peranakan cuisine. The marriage of Chinese ingredients with Malay spices produces rich, spicy delights. The staple rice comes with meat, poultry, fish and vegetables. The condiment sambal blachan is a very hot accompaniment. Ngo heong, a roll of minced pork and prawns seasoned with five spice powder, wrapped and fried to a crispy golden brown is exceptional. Ayam panggan Blue Ginger is a house speciality of grilled, deboned chicken thigh and drumstick flavoured with coconut milk and spices. Otak otak is a popular dish of minced fish meat mixed with a spicy paste, encased in a leaf and grilled. Desserts comprise durian chendol (red beans and pandan flavoured jelly in freshly squeezed coconut milk sweetened with gula melaka - thick brown palm sugar - and durian puree), chendol minus the strong aroma of durian fruit, and gula melaka (chilled sago topped with honey sea coconut).

#### Wine:

A small list of five whites and five reds, with tasting notes, from France and Australia, ranging from \$35 to \$54.

#### Specialities

Durian chendol  
 Ayam panggan

#### Opening Hours

*Open Daily*

#### Lunch

11.30am-3pm

#### Dinner

6pm-10pm  
 (weekdays), 6.30pm-  
 10.30pm (weekends)

#### Last Orders

2.30pm, 9.30pm  
 (Weekdays), 10pm  
 (Weekends)

#### Details

#### Reservations

Lunch and dinner  
 recommended

#### Dress Code

Smart casual

#### Set Meals

Lunch & Dinner

#### Buffet

No

#### Vegetarian Menu

Yes

#### Use of MSG

Yes

#### Smoking Areas

No

#### Mobile Phones

#### Allowed

Yes

#### Amenities

One function room

#### Serves Alcohol

Yes

#### Lounge/Bar

No

#### Corkage Charged

\$25

#### Car Valet

No

Staff are welcoming, efficient and willing,  
with good menu knowledge, and take pride  
in being of service.

1995  
**Credit Cards**  
AE, V, MC, JCB

**Price:**

A fulfilling and delicious dinner for four will  
cost about \$90.

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